IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 9TH AUGUST 2006 / 18TH SRAVANA 1928

OP.No. 23460 of 2002(P)

PETITIONER:

NABEESA, AGED 70 YEARS,
W/O. LATE MUHAMMED GURUKKAL, KUNNUMMEL HOUSE,
EDATHALA KARA, EDATHALA GRAMA PANCHAYATH, ALUVA.

BY ADV. SRI.P.K.IBRAHIM
SMT.K.A.ANGEL TREENA

RESPONDENTS:

THE DEPUTY TAHSILDAR,
(REVENUE RECOVERY), ALUVA.

BY GOVERNMENT PLEADER SMT.RAJASREE M.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.39960/2002 IN OP. 23460/2002

DISMISSED

9.8.2006 **SD/- C.N.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1;- COPY OF THE DECREE DT. 31.3.2001 IN O.S. NO.737/94-OF THE PRINCIPAL SUB JUDGE , NORTH PARAVUR.

EXT.P2:- COPY OF THE COMPROMISE PETIITION SUBMITTED BY THE PETITIOENR AND OTHERS DT.2.2.2002 BEFORE THIS HONOURABLE COURT.

EXT.P3:- COPY OF THE DEMAND NOTICE DT.20.5.02 ISSUED BY THE RESPONDENT TO THE PETITIONER.

EXT.P4:- COPY OF THE LETTER DT.15.6.02 FROM THE PETITIOENR TO THE RESPONDENT.

/TRUE COPY/

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C.N.RAMACHANDRAN NAIR, J.

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O.P. No.23460 of 2002

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Dated this the 9th day of August, 2006.

JUDGMENT

The petitioner is challenging recovery proceedings for recovery of balance court fee payable under Ext.P1 decree. Obviously the suit filed by the petitioner as indigent person was dismissed by the civil court. Therefore, court fee is payable by the petitioner under Rule 11 of Order XXXIII of the CPC. The decree passed in regard to recovery of court fee is consistent with the above provision of the CPC and therefore, challenge against recovery proceedings is not maintainable. However, the petitioner has stated that in appeal, the appellate court passed a compromise decree which is not produced in court. The petitioner has only produced a C.M.P. in this court which is only a compromise petition. It is not known as to what is the modification of Ext.P1 in regard to recovery of court fee. Unless petitioner gets Ext.P1 modified by the appellate court or the lower court consistent with the compromise decree if any passed, the court fee is recoverable from the petitioner under Rule11. The O.P. is therefore dismissed leaving freedom to the petitioner to ask for modification of the decree.

C.N.RAMACHANDRAN NAIR
Judge

pms